

NO. PD-748-17

IN THE COURT OF CRIMINAL APPEALS RECEIVED
COURT OF CRIMINAL APPEALS
2/9/2018
DEANA WILLIAMSON, CLERK

KELSEY JO LACKEY

v.

THE STATE OF TEXAS

On Discretionary Review From the
Waco Court of Appeals
Cause No. 10-17-00016-CR

REPLY BRIEF FOR APPELLANT

E. Alan Bennett
State Bar #02140700
Counsel for Appellant

Sheehy, Lovelace & Mayfield, P.C.
510 N. Valley Mills Dr., Ste. 500
Waco, Texas 76710
Telephone: (254) 772-8022
Telecopier: (254) 772-9297
Email: abennett@slm.law

ORAL ARGUMENT REQUESTED

Table of Contents

Table of Contents	2
Index of Authorities	3
Issue Presented	5
Summary of the Argument in Reply	6
Argument	7
1. Did Appellant voluntarily, knowingly and intelligently waive his right of appeal by signing boilerplate waivers?	7
A. The Court should require the filing of the reporter's record	7
B. The clerk's record is incomplete	10
C. The documents referred to by the State merely muddy the waters	11
D. The cases relied on by the State do not apply or have been misconstrued	17
E. Conclusion	19
Prayer	20
Certificate of Compliance	21
Certificate of Service	21

Index of Authorities

Federal Cases

Evitts v. Lucey, 469 U.S. 387 (1985)10

Texas Cases

Cheek v. State, 65 S.W.3d 728 (Tex. App. – Waco 2001, no pet.)9

Ex parte Broadway, 301 S.W.3d 694 (Tex. Crim. App. 2009)17

Ex parte De Leon, 400 S.W.3d 83 (Tex. Crim. App. 2013)7, 18

Ex parte Tabor, 565 S.W.2d 945 (Tex. Crim. App. 1978)19

Hubert v. State, 286 S.W.3d 484 (Tex. App. – Corpus Christi 2009), *rev'd on other grounds*, 312 S.W.3d 554 (Tex. Crim. App. 2010) 14, 15, 16

Jones v. State, 488 S.W.3d 801 (Tex. Crim. App. 2016)17

Marsh v. State, 444 S.W.3d 654 (Tex. Crim. App. 2014)17

Monreal v. State, 99 S.W.3d 615 (Tex. Crim. App. 2003)19

Park v. State, No. 13-08-00543-CR, 2010 WL 1115678 (Tex. App. – Corpus Christi Mar. 25, 2010, no pet.) (mem. op., not designated for publication)..16

Reed v. State, 516 S.W.2d 680 (Tex. Crim. App. 1974)19

Thomas v. State, 408 S.W.3d 877 (Tex. Crim. App. 2013)18

Willis v. State, 121 S.W.3d 400 (Tex. Crim. App. 2003)19

Rules

TEX. R. APP. P. 34.6(b)	8, 9
TEX. R. APP. P. 35.3(b)	8

Treatises

43B GEORGE E. DIX. & JOHN M. SCHMOLESKY, TEXAS PRACTICE SERIES: CRIMINAL PRACTICE AND PROCEDURE § 56:8 (3d ed. 2011).....	19
---------------------------------------------------------------------------------------------------------------------------	----

Issue Presented

1. Did Appellant voluntarily, knowingly and intelligently waive his right of appeal by signing boilerplate waivers?

Summary of the Argument in Reply

The State asks this Court to rely on a partial record to evaluate the enforceability of Kelsey Jo Lackey's boilerplate waivers of appeal. For reasons already addressed in a pending motion to supplement the appellate record and as further explained here, the Court should require the reporter's record to be filed in this Court before addressing the issue presented.

The State refers to several documents in the record that would indicate that the boilerplate waivers should be enforced. However, there are other documents in the record that indicate the contrary. Additionally, both parties refer to statements made during the several hearings in the trial court that either support or contradict Mr. Lackey's contention that the boilerplate waivers should not be enforced. In the face of this contradictory record, it cannot be said that Mr. Lackey voluntarily, knowingly and intelligently waived his right to appeal.

Finally, Mr. Lackey addresses many of the cases relied on by the State and explains why they do not apply or should be distinguished.

.

Argument

1. Did Appellant voluntarily, knowingly and intelligently waive his right of appeal by signing boilerplate waivers?

When this Court considers the totality of the record, it should conclude that Mr. Lackey's boilerplate waivers of appeal are not enforceable because he did not make them voluntarily, knowingly and intelligently.

A. The Court should require the filing of the reporter's record.

In *Ex parte De Leon*, this Court reviewed "the totality of the record" to determine whether that applicant's boilerplate waiver of appeal was a part of his plea bargain (and enforceable against him). *See Ex parte De Leon*, 400 S.W.3d 83, 87 (Tex. Crim. App. 2013). Consistent with *De Leon*, this Court should insist on having a complete record including the reporter's record to properly address the issue presented.

The State urges this Court not to consider the reporter's record because the court of appeals did not consider it.¹ Mr. Lackey explained in his Motion to Supplement the Appellate Record why the reporter's record should be filed in this Court and considered. He expressly asked the court of appeals

¹ Yet curiously the State cites to the reporter's record 5 times in its own brief. *See* State's Brief at 10, n.7; 11; 11, n.9; 12; & 12, n.10.

to consider the reporter's record in his motion for rehearing, but that court declined to do so. Under these circumstances, the fact that the court of appeals did not consider the reporter's record should not preclude this Court from doing so.

Also, Mr. Lackey followed the proper procedures for the filing of the reporter's record on appeal. He filed a request for preparation of the reporter's record on March 7, 2017. (SCR4-5)² And he paid the court reporter who furnished a copy of the record to Mr. Lackey's counsel but never filed it with the court of appeals.

Rule 35.3(b) provides in relevant part that a court reporter "is responsible" for filing the reporter's record if: (1) a notice of appeal is filed; (2) the appellant requests that the record be prepared; and (3) the appellant pays the reporter's fee or makes satisfactory arrangements for payment of the fee. TEX. R. APP. P. 35.3(b).

Rule 34.6(b)(1) requires an appellant to request the reporter's record "[a]t or before the time for perfecting the appeal." *Id.* 34.6(b)(1).

² Mr. Lackey refers to the supplemental clerk's record filed in this Court on February 7, 2018 as "SCR."

Here, the trial court imposed (and suspended) sentence on January 6, 2017. Thus, Mr. Lackey's notice of appeal was due on or before Monday, February 6, 2018. Mr. Lackey timely filed his notice of appeal and an amended notice of appeal on the date of sentencing. (CR123-26) Accordingly, Mr. Lackey should have filed a request for the reporter's record on or before February 6, 2017. *See* TEX. R. APP. P. 34.6(b)(1). But he failed to do so until March 7, 2017—still nearly 2 weeks before the court of appeals majority issued its opinion dismissing the appeal and over 3 months before the majority denied the motion for rehearing.

Mr. Lackey's failure to timely request the reporter's record does not change his entitlement to have that record prepared and filed. Rather, "[a]n appellate court must not refuse to file a reporter's record or a supplemental reporter's record because of a failure to timely request it." *Id.* 34.6(b)(3).

Once Mr. Lackey complied with the requirements of Rule 35.3 by perfecting the appeal, requesting the reporter's record and paying for it, the burden then shifted to the court of appeals and the trial court to ensure that the record was filed. *Cheek v. State*, 65 S.W.3d 728, 730 (Tex. App.—Waco 2001, no pet.).

Mr. Lackey followed the proper procedures for the filing of the reporter's record. The unenforceability of his boilerplate waivers of appeal rests in part on statements made during the trial proceedings. Thus, due process requires that the Court consider the reporter's record in evaluating the issue presented. *See Evitts v. Lucey*, 469 U.S. 387, 401 (1985) (when a state chooses to confer a right not constitutionally required [like the right of appeal], "it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause").

B. The clerk's record is incomplete.

The State correctly notes that the clerk's record on file with this Court that was filed with the court of appeals on February 7, 2017 has only 155 pages, though Mr. Lackey's counsel referred to pages far beyond that in his Corrected PDR and in his Brief. Counsel did so because the district clerk furnished him a different version of the clerk's record than was filed with the court of appeals. Counsel has also come to learn that the clerk's record on file with this Court is incomplete. Thus, he is contemporaneously taking actions to ensure that a complete clerk's record is filed with this Court.

The Waco Court of Appeals does not make appellate records available via the Attorney Portal so counsel asked the district clerk to email counsel a

copy of the clerk's record. Counsel received a clerk's record dated August 15, 2017 that contains 492 pages. Counsel mistakenly assumed that this record was identical to the one filed with the court of appeals.³

Counsel has also come to realize that the clerk's record on file with this Court continues to be missing some key documents. Counsel is requesting that the clerk's record be supplemented a second time contemporaneously with the filing of this reply brief.

C. The documents referred to by the State merely muddy the waters.

The State refers in its brief to three items in the clerk's record not mentioned in the Appellant's Brief that demonstrate Mr. Lackey voluntarily, knowingly and intelligently waived his right of appeal. Yet they are at best contradictory to other documents in the record and statements on the record. In the face of a contradictory record, the Court cannot say with assurance that Mr. Lackey's boilerplate waivers constitute voluntary, knowing and intelligent waivers of the right to appeal.

³ Counsel is including the cover page, table of contents and certification from this August 2017 clerk's record in the Appendix to this reply brief for informational purposes only.

1. The initials on the plea documents

First, the State points to Mr. Lackey's and his trial counsel's initials on the plea documents on a line labeled "waiver/consent" that appears at the conclusion of the Defendant's Plea of Guilty, Waiver, Stipulation and Judicial Confession drafted for each count of the indictment. (CR129-32, 133-36)⁴ These plea documents list 8 numbered waivers on page 3, followed by:

- a paragraph judicially confessing to the charged offense
- a paragraph regarding the voluntariness of the plea
- a paragraph reciting the right to file a motion for new trial and an appeal; the right to appointed counsel for appeal for indigent persons; as well as a waiver of the right to file a motion for new trial or appeal without the permission of the trial court
- a paragraph providing for the destruction of evidence in the State's possession as well as a waiver of the right to request additional testing of the evidence, to present new evidence or defenses, or to claim innocence based on such evidence.

⁴⁴ The 4-page plea document for Count Two appears immediately before the 4-page plea document for Count One in the record.

(CR131-32, 135-36)

The last paragraph described above continues onto the fourth page of the plea document. Lines for the defendant's and counsel's initials appear after the phrase "waiver/consent" near the top of the fourth page immediately following the previously described last paragraph relating to the destruction of evidence. And the initials are followed by the statement, "I further understand the admonitions of the Court, and I am aware of the consequences of my plea." Mr. Lackey's signature appears immediately following this statement. (CR132, 136)

The State contends that Mr. Lackey's and counsel's initials on the fourth page of these documents reflect "that they reviewed the paperwork and knew what rights Appellant was waiving." State's Brief at 4, n.3. Mr. Lackey respectfully suggests that this is not necessarily so.

First, although the entry in question refers to "waivers," the immediately preceding page specifically enumerates 8 rights that are being waived. Then, 3 unnumbered paragraphs later, a waiver of appeal appears in the midst of a paragraph discussing the right to appeal, the right to court-appointed counsel for appeal, and then the waiver of appeal. It is the lengthiest paragraph on the page. (CR131, 135) If the State wants to make

this waiver clear, unambiguous and enforceable, it should make it one of the specifically enumerated rights being waived.

Second, the initials appear on a different page than the boilerplate waiver the State seeks to enforce. (CR131-32, 135-36) If the State wants to make this waiver, clear, unambiguous and enforceable, it should require the defendant and counsel to initial every page. *Cf. Hubert v. State*, 286 S.W.3d 484, 488 (Tex. App.—Corpus Christi 2009) (reciting that the appellant “initial[ed] several written admonishments”), *rev’d on other grounds*, 312 S.W.3d 554 (Tex. Crim. App. 2010).

2. Return or destruction of property seized

The State next refers to the Plea Agreement and Order documents prepared for each count. In these orders, the trial court ordered the return or destruction of evidence in the State’s possession. (CR127, 128)

The State also refers to a Motion to Return Property filed by Mr. Lackey in which he requested the return of 6 computers and a cellphone that were seized from him at the time of arrest and the trial court’s order granting this motion. (CR138-39) In this motion, Mr. Lackey’s counsel asserted that he was entitled to return of his property because “[t]he case has been resolved.” (CR138)

The State suggests that counsel's assertion that the case had been resolved (and the State's lack of objection to this motion) "rebut any argument that Appellant did not intend to waive appeal." State's Brief at 6, n.4.

Mr. Lackey agrees that the request for the return of his computers can be construed as rebutting his argument but it does not conclusively rebut his contention that his boilerplate waivers were not made voluntarily, knowingly and intelligently. It would be very understandable that a businessperson would want the return of these items to continue his occupation while his appeal was pending.

The Corpus Christi Court has particularly focused on the fact that a boilerplate waiver may not be enforced when contained in a "contradictory record." Mr. Lackey suggests this the record in his case is sufficiently contradictory to rebut any presumption that the boilerplate waivers should be enforced.

"A contradictory record may rebut the validity of a boilerplate waiver." *Hubert*, 286 S.W.3d at 488. In *Hubert*, the court found "at least two specific, holographic instances evidencing Hubert's intent to retain his right

to appeal” and thus concluded that the boilerplate waiver of appeal in his case should not be enforced. *Id.* at 488-49.

The Corpus Court relied on *Hubert* one year later in *Park* where the State also sought to enforce a boilerplate waiver of appeal. In *Park*, the defendant signed a boilerplate waiver but also signed and initialed a statement that he could not appeal without the trial court’s permission “except on those matters raised by written pretrial motion and ruled upon by the [trial court].” *Park v. State*, No. 13-08-00543-CR, 2010 WL 1115678, at *2 (Tex. App.—Corpus Christi Mar. 25, 2010, no pet.) (mem. op., not designated for publication). The trial court certification also reflected that he had the right to appeal pretrial rulings. *Id.* And based on this contradictory record, the Corpus Court declined to enforce the boilerplate waiver of appeal. *Id.*

Mr. Lackey’s case is very much like the *Park* case. The plea documents contain boilerplate waivers of appeal as already discussed. But the same documents also contain a contradictory statement like the one in *Park* that “I do not have the right to appeal without permission of the Judge except for those matters raised by written motions filed before trial.” (CR130, 134)

And like *Park*, the trial court signed certifications indicating Mr. Lackey had the right of appeal and even signed one of them on the same date that Mr. Lackey called the trial court's attention to his intent to appeal. (CR147, 148)

As previously discussed in the Appellant's Brief, the record at best contains contradictory documents regarding the boilerplate waivers and rebut any presumption that Mr. Lackey voluntarily, knowingly and intelligently waived his right of appeal.

D. The cases relied on by the State do not apply or have been misconstrued.

The State places primary reliance on five cases to support its position that Mr. Lackey's boilerplate waivers of appeal should be enforced.

The State refers to *Marsh* for the proposition that a waiver of appeal will be enforced if it was made "voluntarily, knowingly, and intelligently." *Marsh v. State*, 444 S.W.3d 654, 660 (Tex. Crim. App. 2014). Mr. Lackey acknowledged this proposition on page 13 of his brief when he cited this Court's 2016 decision in *Jones*.

A waiver of appeal is valid and enforceable if "made voluntarily, knowingly, and intelligently." *Jones v. State*, 488 S.W.3d 801, 805 (Tex. Crim. App. 2016); *Ex parte Broadway*, 301 S.W.3d 694, 697 (Tex. Crim. App. 2009).

Appellant's Brief at 13.

Mr. Lackey's discussion about whether the boilerplate waivers were bargained for represents just one of the four factors he contends an appellate court should review when deciding whether to enforce a boilerplate waiver. *See* Appellant's Brief at 15-27.

The State attempts to distinguish *De Leon* because there the State failed to hold the applicant to the boilerplate waiver "at the plea hearing." *See De Leon*, 400 S.W.3d at 90. Then, the State refers to its oral objections **at sentencing** to Mr. Lackey's expressed intent to appeal. *State's Brief* at 11-12. However, the State was silent about the right of appeal (or any waiver thereof) during "the plea hearing." *Cf. De Leon*, 400 S.W.3d at 90.⁵

The State also cites *Alzarka*, *Thomas* and *Willis*, but these cases must all be distinguished because they each involved a trial court actually granting permission to appeal which trumps any waiver of appeal—boilerplate or otherwise.⁶ *See Thomas v. State*, 408 S.W.3d 877, 887 (Tex. Crim. App. 2013);

⁵ The State's argument here demonstrates once again the need for a complete reporter's record to properly decide the issue presented.

⁶ This Court has long recognized that a defendant who has waived appeal may nevertheless pursue an appeal with the trial court's consent. *Monreal v. State*, 99 S.W.3d

Willis v. State, 121 S.W.3d 400, 403 (Tex. Crim. App. 2003); *Alzarka*, 90 S.W.3d at 322-24.

Accordingly, the authorities cited by the State do not aid its argument.

E. Conclusion

For the reasons stated in the Appellant's Brief and in this Reply Brief, this Court should conclude that Mr. Lackey's boilerplate waivers of appeal are not valid or enforceable because he did not make them voluntarily, intelligently or knowingly. The majority of the Waco Court erred by concluding otherwise.

The Court should reverse and remand this appeal with instructions to the lower court to: (1) direct the parties to file briefs on the merits with regard to the trial court's denial of Mr. Lackey's motions to quash; and (2) adjudicate the merits of the appeal.

615, 622 (Tex. Crim. App. 2003); *Ex parte Tabor*, 565 S.W.2d 945, 946 (Tex. Crim. App. 1978); *Reed v. State*, 516 S.W.2d 680, 682 (Tex. Crim. App. 1974); see 43B GEORGE E. DIX. & JOHN M. SCHMOLESKY, TEXAS PRACTICE SERIES: CRIMINAL PRACTICE AND PROCEDURE § 56:8 (3d ed. 2011).

Prayer

WHEREFORE, PREMISES CONSIDERED, Appellant Kelsey Jo Lackey asks the Court to: (1) order the filing of a complete reporter's record in this Court; (2) allow the supplementation of the clerk's record; (3) reverse the judgment of the court below; and (4) grant such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

/s/ Alan Bennett
E. Alan Bennett
SBOT #02140700
Counsel for Appellant

Sheehy, Lovelace & Mayfield, P.C.
510 N. Valley Mills Dr., Ste. 500
Waco, Texas 76710
Telephone: (254) 772-8022
Fax: (254) 772-9297
Email: abennett@slm.law

Certificate of Compliance

The undersigned hereby certifies, pursuant to Rule of Appellate Procedure 9.4(i)(3), that this computer-generated document contains 3,347 words.

/s/ Alan Bennett
E. Alan Bennett

Certificate of Service

The undersigned hereby certifies that a true and correct copy of this corrected petition was served electronically on February 8, 2018 to: (1) counsel for the State, Douglas Howell, III, dhowell@brazoscountytexas.gov; and (2) the State Prosecuting Attorney, information@SPA.texas.gov.

/s/ Alan Bennett
E. Alan Bennett

CLERK'S RECORD

VOLUME 1 OF 1
Trial Court Cause No. 13-04695-CRF-272
In the 272nd District Court
of BRAZOS County, Texas-
Honorable Travis Bryan, Presiding Judge

THE STATE OF TEXAS
VS.
KELSEY JO LACKEY

Appealed to the 10TH Court of Appeals
for the 272nd District Court
of Bryan, Texas.

Attorney for Appellant(s):
CHAD P. VAN BRUNT; E. ALAN
BENNETT
310 S. ST MARY'S ST., SUITE 1840
SAN ANTONIO, TX 78205; 510 NORTH
VALLEY MILLS DRIVE, STE. 500,
WACO, TX 76710

Attorney for Appellee:
DOUG HOWELL
300 E 26TH ST SUITE 310
BRYAN, TX 77803

Bar#: 24070784; 02140700
Ph#: 210-399-8669; 251-772-8022

Bar#: 10098100
Ph#: 979-361-4320

Delivered to the 10TH Court of Appeals for
the 272nd District Court at BRYAN, Texas on this the 15th day of August, 2017
.

Marc Hamlin,
Brazos County District Clerk

/s/ J. Alexander
DEPUTY CLERK

Appellate Court Cause No. _____

Filed in the Court of Appeals for the 10TH District of
Texas, at _____, Texas on this _____ day of
_____, 20 .

_____, Clerk

By: _____, Deputy

Trial Court Cause No. 13-04695-CRF-272

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
VS.	§	BRAZOS COUNTY, TEXAS
KELSEY JOE LACKEY	§	272ND DISTRICT COURT

In the 272nd District Court of Brazos County, Texas the Honorable Travis Bryan Judge Presiding, the following proceedings were held and the following instruments and other papers were filed in this cause to wit:

CAUSE NO. 13-04695-CRF-272

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
VS.	§	BRAZOS COUNTY, TEXAS
KELSEY JO LACKEY	§	272nd District Court

INDEX

<u>Document:</u>	<u>File Date:</u>	<u>Page:</u>
Appeal Clerks Cover Page	08/15/17	1 - 1
Appeal Information Sheet	08/15/17	2 - 2
Appeal Index	08/15/17	3 - 6
Indictment	12/18/14	7 - 10
DOCKET SHEET	12/22/14	11 - 14
MOTION TO IMPOSE BOND CONDITIONS	01/05/15	15 - 16
ORDER ON MOTION TO IMPOSE BOND CONDITIONS	01/05/15	17 - 17
LETTER TO THE JUDGE/CHANGE OF ADDRESS	01/13/15	18 - 18
MOTION FOR CONTINUANCE	01/14/15	19 - 26
ORDER CONSOLIDATING CASES	01/23/15	27 - 28
STATE'S NOTICE OF INTENT TO USE AS EVIDENCE BUSINESS RECORDS ACCOMPANIED BY AFFIDAVIT	03/05/15	29 - 30
EMAIL CORRESPONDENCE	04/10/15	31 - 31
FIRST MOTION TO QUASH SUBPOENA AND DISMISS INDICTMENT	05/13/15	32 - 40
MOTION TO QUASH SUBPOENA	05/14/15	41 - 43
NOTICE OF CHANGE OF ADDRESS FOR DEFENDNAT	05/18/15	44 - 44
ORDER ON MOTION FOR CONTINUANCE	06/04/15	45 - 46
MOTION FOR CONTINUANCE	06/04/15	47 - 50
EMAIL CORRESPONDENCE	06/24/15	51 - 56
MOTION FOR CONTINUANCE	07/20/15	57 - 60
MOTION TO QUASH SUBPOENA	07/28/15	61 - 63
MOTION TO QUASH SUBPOENA	07/28/15	64 - 66
EMAIL CORRESPONDENCE	07/29/15	67 - 69
ORDER TO PRODUCE DOCUMENTS	07/29/15	70 - 71
ORDER ON MOTION TO QUASH SUBPOENA	07/29/15	72 - 72
ORDER ON MOTION TO QUASH SUBPOENA	07/29/15	73 - 73
MOTION FOR CONTINUANCE	08/11/15	74 - 77
ORDER ON MOTION FOR CONTINUANCE	11/06/15	78 - 78

INVOCATION OF THE RULE	11/25/15	79 - 80
MOTION FOR EXCULPATORY EVIDENCE PRODUCTION	11/25/15	81 - 84
DEFENDANT'S MOTION FOR COURT REPORTER TO RECORD PROCEEDINGS	11/25/15	85 - 88
MOTION FOR DISCOVERY AND INSPECTION	11/25/15	89 - 94
MOTION FOR CONTINUANCE	10/05/15	95 - 97
MOTION IN LIMINE	11/25/15	98 - 101
MOTION TO SUPPRESS STATEMENTS	11/25/15	102 - 104
MOTION TO SUPPRESS EVIDENCE	11/25/15	105 - 107
REQUEST FOR NOTICE	11/25/15	108 - 109
REQUEST FOR EXPERT WITNESS NOTICE	11/25/15	110 - 111
WAIVER OF ARRAIGNMENT, PLEA OF NOT GUILTY, AND REQUEST FOR JURY TRIAL	11/25/15	112 - 112
EMAIL CORRESPONDENCE	12/08/15	113 - 114
MOTION TO MODIFY	12/08/15	115 - 116
ATTORNEY LETTER OF REPRESENTATION	02/12/16	117 - 118
ORDER SEALING	02/12/16	119 - 119
MOTION FOR CONTINUANCE	04/28/16	120 - 123
APPEARANCE OF CO-COUNSEL	05/06/16	124 - 125
EMAIL CORRESPONDENCE	05/10/16	126 - 126
ORDER ON MOTION FOR CONTINUANCE	05/10/16	127 - 127
SECOND MOTION TO SET ASIDE THE INDICTMENT	05/12/16	128 - 131
MEMORANDUM IN SUPPORT OF DEFENDANT'S SECOND MOTION TO SET ASIDE THE INDICTMENT	05/17/16	132 - 148
NOTICE OF TRANSACTIONS RELIED UPON BY THE STATE	05/17/16	149 - 159
EMAIL CORRESPONDENCE	05/18/16	160 - 160
REQUEST/ LETTER TO THE JUDGE	05/24/16	161 - 161
REQUEST/ LETTER TO THE JUDGE	06/02/16	162 - 164
APPLICATION TO TAKE DEPOSITION OF WITNESS	06/10/16	165 - 176
EMAIL CORRESPONDENCE	06/14/16	177 - 181
EMAIL CORRESPONDENCE	06/14/16	182 - 188
REQUEST/ LETTER TO THE JUDGE	06/20/16	189 - 189
REQUEST/ LETTER TO THE JUDGE	06/23/16	190 - 191
MOTION FOR CONTINUANCE MATERIAL WITNESS NOT AVAILABLE	07/06/16	192 - 203
REQUEST/ LETTER TO THE JUDGE	07/12/16	204 - 204
REQUEST/ LETTER TO THE JUDGE	07/14/16	205 - 205
CONDITIONS OF COMMUNITY SUPERVISION	01/05/17	206 - 208
MOTION TO RETURN PROPERTY	01/06/17	209 - 210
TRIAL COURT CERTIFICATION OF DEFENDANT RIGHT OF APPEAL	01/06/17	211 - 211
TRIAL COURT CERTIFICATION OF DEFENDANT RIGHT OF APPEAL	01/06/17	212 - 212
AMENDED NOTICE OF APPEAL	01/09/17	213 - 214

NOTICE OF APPEAL	01/09/17	215 - 216
PLEA AGREEMENT AND ORDER	01/09/17	217 - 218
DEFENANT'S PLEA OF GUILTY, WAIVER, STIPULATION AND JUDICIAL CONFESSION	01/09/17	219 - 226
COMMITMENT/RELEASE ORDER	01/09/17	227 - 227
MOTION FOR REASONABLE BAIL PENDING APPEAL	01/09/17	228 - 233
ORDER ON MOTION OF REASONABLE BAIL PENDING APPEAL	01/09/17	234 - 234
NOTICE OF APPEAL	01/09/17	235 - 236
AMENDED NOTICE OF APPEAL	01/09/17	237 - 238
TRIAL COURT CERTIFICATION OF DEFENDANT RIGHT OF APPEAL	01/31/17	239 - 239
EMAIL CORRESPONDENCE	02/06/17	240 - 241
STATE'S MOTION TO DENY BOND AND TO AMEND TRIAL COURT'S CERTIFICATION OF THE DEFENDANT'S RIGHT TO APPEAL	02/06/17	242 - 265
ORDER ON MOTION FOR BOND	02/06/17	266 - 266
JUDGMENT OF CONVICTION BY COURT	02/08/17	267 - 276
REQUEST FOR PREPARATION OF REPORTER'S RECORD AND DESIGNATION OF MATTERS TO BE INCLUDED	03/07/17	277 - 278
DESIGNATION OF CLERK'S RECORD	03/07/17	279 - 280
PETITION FOR WRIT OF MANDAMUS	03/13/17	281 - 358
PETITION FOR WRIT OF MANDAMUS	03/13/17	359 - 481
LETTER TO THE JUDGE	03/13/17	482 - 482
MEMORANDUM OPINION	03/21/17	483 - 485
MEMORANDUM OPINION	03/23/17	486 - 488
EMAIL CORRESPONDENCE	08/15/17	489 - 489
NOTICE OF APPEARANCE	08/15/17	490 - 491
Appeal Certificate	08/15/17	492 - 492

**THE STATE OF TEXAS
COUNTY OF BRAZOS**

I, Marc Hamlin, Clerk of the 272nd District Court of Brazos County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

**GIVEN UNDER MY HAND AND SEAL OF SAID COURT, at my office
in Brazos County, Texas, on this the 15th day of August, 2017.**



**Marc Hamlin, District Clerk
Brazos County, Bryan Texas**

**/s/ J. Alexander
Deputy Clerk**